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**DECISION**



*James M. ...*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-190735

**DATE:** July 14, 1978

**MATTER OF:** D&P Transportation Company, Inc.

**DIGEST:**

1. Because of incumbent contractor's alleged poor performance, Navy issued sole-source RFP for continuation of services to firm that submitted unsolicited proposal. Three weeks later, after incumbent protested, incumbent was furnished RFP and allowed to compete. Incumbent's protest that other firm unfairly had more time to prepare its proposal is denied, since protester was not prejudiced thereby. Agency's actions while proceeding on sole-source basis were not improper; protester was incumbent with inherent competitive advantages; and both of protester's requested extensions of proposal due date were granted by contracting officer.
2. Offeror whose proposal was rejected because proposed costs were unreasonably high contends that Navy is improperly providing successful offeror with Government equipment to aid contract performance. In response, Navy alleges that RFP clearly contemplated equipment's availability. Protest is denied, because even if RFP was unclear on matter, protester was not prejudiced thereby. Adjustment of protester's costs to reflect use of such equipment still leaves protester's offer substantially higher in price than awardee's.
3. Protest against realism of another offeror's proposed costs for cost-plus-fixed-fee contract that does not show contracting officer's evaluation thereof unreasonable is denied, since such determination is matter for judgment of contracting officer.
4. Protest that awardee cannot adequately perform contract services is denied, since, with certain exceptions not applicable here, GAO does not

review protests against affirmative determinations of responsibility. Whether actual performance conforms to contract requirements is matter of contract administration and is not for consideration by our Office.

5. Protester contends that presence of another firm's personnel in protester's warehouse while protester was performing services under contract with Navy prejudiced protester in subsequent competition for continuation of services. Protest is untimely and will not be considered on its merits, since it was filed more than 10 working days after protester knew that such firm was competing for new contract.

On January 2, 1977, D&P Transportation Company, Inc. (D&P), was awarded a contract under the section 8(a) program of the Small Business Act, 15 U.S.C. § 637(a)(1) (1970), to operate a warehouse for the Naval Electronics Systems Engineering Center, Portsmouth, Virginia. The contract term was for 9 months, with an option to renew for another 3 months. By letter of September 30, 1977, the Navy informed D&P and the Small Business Administration that the contract would not be continued after December 31, 1977, on the basis that D&P had not made certain "anticipated improvements."

At a meeting with Navy representatives on November 21, D&P was advised that the Navy was negotiating on a sole-source basis with Milcom Systems Corporation (Milcom) to provide the services after December 31 on a cost-plus-fixed-fee basis. D&P was furnished a copy of the sole-source RFP, under which Milcom's proposal was due on November 25. On November 21, D&P filed a protest in our Office, contending that the services for 1978 should be procured competitively.

On November 23, the contracting officer advised D&P that an offer from that firm would be considered.

At D&P's requests, the date for receipt of initial proposals was extended first to November 28 and then to December 2.

Discussions were held with both offerors on December 5, and revised proposals were submitted by December 9. The contracting officer determined that based on the difference between D&P's proposed cost of \$456,321 and Milcom's of \$274,998.86, D&P did not have a reasonable chance of being selected for award. D&P was so advised by letter of December 12, and award was made to Milcom on December 16.

D&P protested the award on December 19. In details supplementing the protest, D&P argued that its performance under the previous contract was not unsatisfactory; it was not afforded as much time to prepare its proposal under the new RFP as was Milcom; because Milcom was being provided certain Government equipment under the RFP, Milcom's proposed costs should be evaluated higher than they appeared; and Milcom will not be able to satisfactorily perform at the contract price. D&P suggests that, in any case, Milcom's proposed costs were unreasonably low. Finally, D&P states that from July 20, 1977, until November 18 the Navy placed Milcom personnel in D&P's warehouse to assist with additional material movement resulting from the closing of a Navy activity at the Washington Navy Yard in Washington, D.C. D&P argues that their presence both adversely affected D&P's performance under its contract and placed D&P at a competitive disadvantage regarding the subsequent solicitation.

Since D&P was afforded the opportunity to compete under the RFP for the 1978 warehouse services, and since its proposal thereunder was rejected only on the basis of its proposed costs, the protest of November 21 and the matter of the adequacy of D&P's performance under its section 8(a) contract are academic and will not be considered.

Concerning the amount of time given for proposal preparation, the Navy states that no discussions were conducted with Milcom until November 2, when the decision was made to procure the services from Milcom on a sole-source basis. Since it was not until approximately 3 weeks later that, upon D&P's protest, the competition was opened to D&P, the Navy's earlier contact with Milcom cannot be considered improper. Moreover, we do not see how D&P was prejudiced thereby. As the incumbent contractor D&P itself clearly enjoyed a competitive advantage to a certain extent, which included the experience and expertise to prepare a proposal for the same services. Cf. ENSEC Service Corp., 55 Comp. Gen. 656 (1976), 76-1 CPD 34. Further, D&P was furnished a copy of the RFP on November 21; two extensions requested by D&P of the date for receipt of its proposal were granted by the contracting officer; and D&P never complained that it needed any additional time for proposal preparation.

D&P specifies the equipment allegedly improperly being furnished Milcom by the Navy as "a computer system, keypunch machine, and other items." D&P contends that the RFP did not provide that such items were available for contract performance. It is in effect D&P's position that had the RFP indicated that the items would be furnished the contractor, D&P's proposed cost for the contract requirement involving them--the provision by the contractor of a computer-based material management information system (MMIS)--would have been substantially less than that submitted.

In response, the Navy points out that Milcom is in fact being furnished certain Government equipment listed in the RFP section entitled "Government Furnished Equipment/Material." Although the computer system and keypunch machine mentioned by D&P are not listed therein, the Navy contends that their availability to the contractor was clearly contemplated in the RFP section that described the MMIS requirement.

D&P's proposed cost for the MMIS was \$62,500. Milcom's proposed cost for that requirement was \$11,800, a difference of \$50,700. As stated above, D&P's proposed cost for the entire contract was \$456,321, whereas Milcom's was \$274,998.86, a difference of \$181,322.14. Thus, and even assuming that the RFP was not clear on the matter, the adjustment of D&P's price as argued would leave a substantial difference in proposed contract cost. In view thereof, we cannot see how D&P was prejudiced by the Navy's actions. Cf. Midland Maintenance, Inc., B-184247, August 5, 1976, 76-2 CPD 127.

Concerning the remainder of Milcom's proposed costs, D&P has presented an analysis of the realism thereof. Although the mechanics of the analysis are unclear, it appears that D&P is attempting to show that Milcom did not include in its proposal costs for certain material and other factors which D&P believes are necessary to satisfactory contract performance.

The determination of the realism of proposed costs for a cost-plus-fixed-fee contract is a matter for the judgment of procuring officials and will not be subject to objection from our Office unless there is no rational basis therefor. See Analysis and Computer Systems, Inc., 57 Comp. Gen. 239 (1978), 78-1 CPD 75.

We have reviewed the Navy's cost analysis regarding Milcom's proposal, which found that all proposed costs were reasonable. In this connection, we note that the Navy's estimated cost for the procurement was \$271,000. The protester has the burden of affirmatively proving its case. Reliable Maintenance Services, Inc.--Request for Reconsideration, B-185103, May 24, 1976, 76-1 CPD 337. We do not consider that D&P's analysis, which is clearly speculative in nature, is sufficient to show that the Navy's evaluation of Milcom's proposed costs was unreasonable.

Moreover, the issue whether Milcom could adequately perform the required services involves the firm's responsibility. The Navy found Milcom responsible. Our Office does not review protests against affirmative determinations of responsibility unless either fraud on the part of procuring officials is alleged, or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Central Metal Products, Inc.; 54 Comp. Gen. 66 (1974), 74-2 CPD 64. Neither exception is applicable here. Whether Milcom's actual performance conforms to the requirements of the contract is a matter of contract administration and is not for our consideration. Virginia-Maryland Associates, B-191252, March 28, 1978, 78-1 CPD 238.

Finally, concerning the presence of Milcom personnel in D&P's warehouse and their effect on D&P's operation and competitive position, section 20.2(b)(2) of our Bid Protest Procedures, 4 C.F.R. part 20 (1977) (Procedures), requires that bid protests be filed "not later than 10 [working] days after the basis for protest is known or should have been known, whichever is earlier." D&P states that it did not know that Milcom was a competitor for the warehousing services until D&P's November 21 meeting with Navy representatives. Even assuming that fact, the matter was first raised in our Office in D&P's letter of January 26, 1978, supplementing its December 19 protest. Accordingly, it is untimely under our Procedures and will not be considered on the merits.

The protest is denied.

*R. F. K. 112*  
Deputy Comptroller General  
of the United States